

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 06-05361 JSW

CHARLES MUHAMMAD,

Plaintiff,

v.

2 NBC, et al.

Defendants.

**ORDER RE FILING OF
AMENDED COMPLAINT**

On September 1, 2006, this Court issued an Order denying Plaintiff's application for a temporary restraining order, denying without prejudice his application to proceed in forma pauperis, and dismissing his complaint with leave to amend. That Order provided that "[i]f Plaintiff wishes to pursue this action, he must file an amended complaint that sets forth the basis of this Court's jurisdiction and which also sets forth a cognizable legal claim." (Order at 3.) The Court also directed Plaintiff to submit a renewed application to proceed *in forma pauperis*. The Court ordered that any amended complaint and *in forma pauperis* application be filed by September 15, 2006.

Instead of filing an amended complaint, Plaintiff apparently chose to appeal the Order. (See Docket No. 6.) As such, the Court took no further action pending resolution of the appeal. On December 5, 2006, the Court of Appeals dismissed the appeal for failure to prosecute.

As set forth in the Court's previous Order dismissing the complaint with leave to amend, Courts must deny *in forma pauperis* applications under certain circumstances, including when

1 the underlying complaint sought to be filed is frivolous or when it fails to state a claim
2 upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

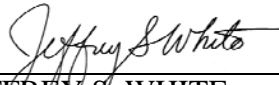
3 In contravention of Federal Rule of Civil Procedure 8(a), Plaintiff failed to file a
4 pleading setting forth the grounds upon which this Court has subject matter jurisdiction over
5 these claims. Rule 8(a) requires “a short and plain statement of the claim showing that the
6 pleader is entitled to relief, . . . and a demand for judgment for the relief the pleader seeks.”
7 Fed. R. Civ. P. 8(a). Instead, the document that the Court construed as Plaintiff’s complaint,
8 entitled “Original Petition,” alleged, without factual support, that the Defendants violated the
9 First, Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution. Further,
10 as noted, although he set forth certain factual allegations in his application for a temporary
11 restraining order, those facts are disjointed and incoherent and do not make clear *how*
12 Defendants violated the First, Fourth, Fifth, Sixth, and Eighth Amendments.

13 Again, if Plaintiff wishes to pursue this action, he must file an amended complaint that
14 sets forth the basis of this Court’s jurisdiction and which also sets forth a cognizable legal
15 claim, as well as a renewed application to proceed *in forma pauperis* by **December 29, 2006**.

16 The Court HEREBY ADVISES the Plaintiff that failure to file a cognizable legal claim
17 by this date shall result in dismissal of this action with prejudice. The Court further advises
18 Plaintiff that a Handbook for Pro Se Litigants, which contains helpful information about
19 proceeding without an attorney, is available through the Court’s website or in the Clerk’s office.

20 **IT IS SO ORDERED.**

21 Dated: December 7, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE